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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

V.

JOHN JACOB OLIVAS,

Defendant.

Case No. ED CR18-00231-JBG

**JOHN JACOB OLIVAS' NOTICE OF
MOTION AND MOTION TO
DISMISS INDICTMENT BASED ON
STATUE OF LIMITATIONS**

Hearing Date: August 23, 2021

Hearing Time: 2:00 p.m.

Location: Courtroom of the
Honorable Jesus G. Bernal

Please take notice that defendant, John Jacob Olivas, by and through his counsel of record, Deputy Federal Public Defenders Angela C. C. Viramontes and Craig A. Harbaugh, moves this Honorable Court for an order dismissing Counts 1, 2, and 3 of the Indictment in this matter as time-barred. This motion is made pursuant to Federal Rule of Criminal Procedure 12 and 18 U.S.C. § 3282, which state the applicable statute of limitations for the counts at issue.

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This motion is based on the attached memorandum of points and authorities, all files and records in this case, and such additional evidence and argument as may be presented at the hearing on the motion.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: July 19, 2021

By /s/ *Angela C. C. Viramontes*

ANGELA C. C. VIRAMONTES
CRAIG A. HARBAUGH
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

John Jacob Olivas is charged with aggravated sexual abuse and attempted aggravated sexual abuse based on incidents that are alleged to have occurred in 2012. But he was not charged until 2018. The indictment was not filed within the five-year statute of limitations for non-capital offenses under 18 U.S.C. § 3281. Though certain violations of § 242--those that result in death--may be subject to the death penalty and thus have no statute of limitations, a violation premised on aggravated sexual assault is not “punishable by death.” Because it is presumed that Congress legislates against the backdrop of existing law, and does not intentionally write unconstitutional statutes, § 242 should be read to extend its “punishable by death” standard only to those violations of § 242 that result in death--as was Congress’s intent--and not to a violation like the ones alleged against Mr. Olivas. For these reasons, dismissal of the indictment is appropriate.

II. STATEMENT OF FACTS

The relevant facts are not in dispute. The indictment was filed on August 1, 2018. It charged as follow:

In Count 1 of the indictment, Mr. Olivas is charged with attempting to engage in vaginal intercourse with K.L. without her consent and by using force, a violation of 18 U.S.C. § 242, in or about January 2012.

In Count 2 of the indictment, Mr. Olivas is charged with engaging in vaginal intercourse with N.B. without her consent and by using force, a violation of 18 U.S.C. § 242, in or about September 2012.

In Count 3 of the indictment, Mr. Olivas is charged with engaging in vaginal intercourse with N.B. without her consent and by using force, a violation of 18 U.S.C. § 242, on or about November 9, 2012.

None of the charges were filed within five years of 2012. Based on discussions of counsel, it appears the government's position will be that the indictment is timely

1 because a violation of § 242 that includes aggravated sexual abuse is punishable by
2 death under the statute, and thus can be charged at any time.

3 III. ARGUMENT

4 A. Counts One Through Three Are Barred by the Statute of Limitations.

5 The government bears the burden of proving that the prosecution was initiated
6 within the applicable statute of limitations period. *Grunewald v. United States*, 353
7 U.S. 391, 396 (1957). “The purpose of a statute of limitations is to limit exposure to
8 criminal prosecution to a certain fixed period of time following the occurrence of those
9 acts the legislature has decided to punish by criminal sanctions. Such a limitation is
10 designed to protect individuals from having to defend themselves against charges when
11 the basic facts may have become obscured by the passage of time and to minimize the
12 danger of official punishment because of acts in the far-distant past. Such a time limit
13 may also have the salutary effect of encouraging law enforcement officials promptly to
14 investigate suspected criminal activity.” *Toussie v. United States*, 397 U.S. 112, 114-15
15 (1970).

16 Here, law enforcement failed to diligently and promptly investigate the alleged
17 offenses, and the passage of time has made it more difficult for Mr. Olivas to defend
18 himself against charges that allegedly occurred almost a decade ago. Because the
19 indictment was not filed within the statute of limitations, it should be dismissed.

20 1. The Facts Are Not in Dispute and This Court Can and Should 21 Resolve This Pure Issue of Law Pretrial.

22 As a threshold matter, the Court can and should resolve the statute-of-limitations
23 question pretrial. As another court considering a pretrial motion to dismiss a charge
24 based on statute-of limitations grounds stated, “a defendant ought not be put to the task
25 of defending a criminal charge that is barred by the inapplicable statute of limitations.
26 This due process concern raised in the motion to dismiss the indictment presents a
27 question of law for the court not the grand jury.” *United States v. Jensen*, 690 F. Supp.
28 2d 901, 910 (D. Alaska 2010). *Accord United States v. Craft*, 105 F.3d 1123, 1126 (6th

1 Cir.1997) (criminal defendant's statute of limitations defense is appropriately resolved
2 by way of pretrial motion); *United States v. Grimmett*, 150 F.3d 958 (8th Cir.1998) (a
3 pretrial motion to dismiss is the appropriate vehicle for testing whether prosecution for
4 violation of 21 U.S.C. § 846 was barred by the statute of limitations).

5 Resolution of this statute-of-limitation issue is appropriate pretrial where, as
6 here, there are no facts in dispute. Because this motion presents a pure question of law,
7 the question is ripe for pretrial decision. *See Craft*, 105 F.3d at 1126.

8 **B. Counts One through Three of the Indictment are Time-Barred.**

9 The vast majority of federal crimes have a five-year statute of limitations.
10 Specifically, the statute provides that “except as otherwise expressly provided by law,
11 no person shall be prosecuted, tried, or punished for any offense, not capital, unless the
12 indictment is found or the information is instituted within five years next after such
13 offense shall have been committed.” 18 U.S.C. § 3282. As a corollary, § 3281 provides
14 that “an indictment for any offense punishable by death may be found at any time
15 without limitation.” The plain reading of these statutes is clear: federal crimes have a
16 five-year statute of limitations unless (1) the statute explicitly provides otherwise; or (2)
17 the offense is a “capital” offense, one “punishable by death.” Because § 242 contains
18 no contrary indication, the sole question presented here is whether the offenses charged
19 in the indictment are “punishable by death.” Clearly it is not.

20 **1. A violation of § 242 involving aggravated sexual abuse is not
21 subject to imposition of the death penalty.**

22 First, it is beyond dispute that Mr. Olivas’ offense is not actually subject to the
23 death penalty. In 1977, the Supreme Court held that the sentence of death for the crime
24 of rape of adult woman was a “grossly disproportionate and excessive punishment”
25 forbidden by Eighth Amendment. *Coker v. Georgia*, 433 U.S. 584, 592 (1977). Thus,
26 from 1977 onward, it has been unconstitutional to impose the death penalty for sexual
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1 assault of an adult woman. The maximum sentence that can possibly be imposed, if the
2 jury returns a guilty verdict in this case, is life imprisonment.

3 **2. Congress never intended for aggravated sexual abuse under 18
4 U.S.C. § 242 to be subject to death, and the statute should be read
5 to avoid this absurd result.**

6 The question, then, is whether § 242's "punishable by death" penalty provision
7 applies to aggravated sexual assault violations. The statute states:

8 Whoever, under color of any law . . . willfully subjects any person to the
9 deprivation of any rights, privileges, or immunities secured or protected by the
10 Constitution or laws of the United States, . . . shall be fined under this title or
11 imprisoned not more than one year, or both . . . and if death results from the acts
12 committed in violation of this section or if such acts include kidnapping or an
13 attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated
14 sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned
15 for any term of years or for life, or both, or may be sentenced to death.

16 18 U.S.C. § 242. The government would have this Court reach that last clause to
17 authorize a death sentence for a violation of § 242 that involves aggravated sexual
18 abuse. But Congress could not have intended its language to be read that way.

19 After the Civil War, Congress enacted the Civil Rights Act of 1866, which made
20 it a crime for "any person, who under color of any law" causes the "deprivation of any
21 right" because of the victim "having at any time been held in a condition of slavery."
22 Civil Rights Act of 1866, Pub. L. No. 39-31 § 2, 14 Stat. 27 (later codified at 18 U.S.C.
23 § 242). As it was originally enacted, this crime was a misdemeanor which was
24 punishable "by fine not exceeding one thousand dollars, or imprisonment not exceeding
25 one year, or both, in the discretion of the court." *Id.* Thus, the offense was not
26 originally a capital crime, nor even a felony.

27 Congress has amended § 242 several times since. In 1968, it authorized a
28 statutory maximum sentence of life imprisonment for violations of § 242 where death

1 resulted; it left all other violations of the law as misdemeanors. *See* Pub. L. 90-284. In
 2 1988, Congress added that a violation resulting in bodily injury was subject to a ten-
 3 year statutory maximum--while, again, leaving all other violations of § 242 subject to
 4 misdemeanor treatment. *See* Pub. L. 100-690.

5 Finally, and of particular relevance here, in 1994, Congress made two separate
 6 changes to the statute, in two separate sections of the Violent Crime Control and Law
 7 Enforcement Act of 1994. In one section of the bill, Congress created additional
 8 aggravating circumstances under § 242 that would not be subject to misdemeanor
 9 treatment, but would instead be subject to a heightened statutory maximum. One such
 10 aggravator is where the violation of § 242 involved “aggravated sexual abuse.” *See*
 11 Pub. L. No. 103-322, § 320103(b)(2). In doing so, it incorporated a separate provision,
 12 18 U.S.C. § 2241, a statute that has a statutory maximum of life.

13 In a separate section of the Act, Congress authorized the death penalty as a
 14 punishment for a violation of § 242. When it did so, though, it did not have all
 15 violations of § 242 in mind. The section is titled “Death Penalty for Civil Rights
 16 *Murders.*” *See* Pub. L. 103-322, § 60006(a) (emphasis added). In providing this caveat,
 17 Congress recognized the scope of its authority and put the death penalty on the table for
 18 certain *homicide* offenses under § 242. *See I.N.S. v. Nat'l Ctr. for Imm. Rights, Inc.*,
 19 502 U.S. 183, 189 (1991) (“[T]he title of a statute or section can aid in resolving an
 20 ambiguity in the legislation’s text.”). That Congress did not go further--in a bill that
 21 greatly expanded the scope of federal criminal jurisdiction over violent offenses, and
 22 the harshness of the punishment for those offenses--proves the maxim that “Congress is
 23 presumed to know the law and to have incorporated judicial interpretations when
 24 adopting a preexisting remedial scheme.” *Miranda B. v. Kitzhaber*, 328 F.3d 1181,
 25 1189 (9th Cir. 2003).

26 The text of § 242 gives the appearance of authorizing a sentence of death for a
 27 violation of the statute that involves aggravated sexual abuse. And yet, “a thing may be
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1 within the letter of the statute and yet not within the statute, because not within its
 2 spirit, nor within the intention of its makers.” *Church of the Holy Trinity v. United*
 3 *States*, 143 U.S. 457, 459 (1892). Such is the case here. To read the statute as the
 4 government does is to presume that Congress intentionally wrote an obviously
 5 unconstitutional statute, when all indicators are that it did not have that intent. The
 6 Court should avoid this absurd result, and, as a matter of constitutional avoidance,
 7 should interpret the statute so that its text is constitutional. *See Griffin v. Oceanic*
 8 *Contractors, Inc.*, 458 U.S. 564, 575 (1982) (“It is true that interpretations of a statute
 9 which would produce absurd results are to be avoided if alternative interpretations
 10 consistent with the legislative purpose are available.”). The only way to do so is to
 11 conclude that the “may be sentenced to death” provision does not apply to sexual-abuse
 12 crimes.

13 **3. Regardless of whether § 242 can be interpreted in this manner,
 14 because Mr. Olivas’ violation of § 242 is not “punishable by
 15 death,” the five-year statute of limitations applies.**

16 Mr. Olivas believes this to be the correct interpretation of the statute. If the Court
 17 disagrees, however, it should still grant the motion. Aggravated sexual abuse is not in
 18 fact punishable by death under *any* circumstances--a fact that has been true from the
 19 moment the sexual abuse provision was added to § 242 until now. As discussed above,
 20 Congress was apparently aware of its constitutional limits and did not appear to intent
 21 the aggravated sexual abuse provision to be subject to punishment by death. As such,
 22 this Court should hold that Mr. Olivas’ offense is not “punishable by death” and thus
 23 does not fall under 18 U.S.C. § 3282, which eliminates, entirely, the statute of
 24 limitation for death-eligible offenses.

25 As an initial point, the Court should not reach the government’s preferred
 26 reading result lightly. “Criminal limitations statutes are to be liberally interpreted in
 27 favor of repose.” *Toussie*, 397 U.S. at 115 (citation and quotation marks omitted). And
 28 here, the plain text of § 3282 aligns with Congress’s apparent intent and demonstrates

1 that the offense charged in this indictment is not “punishable by death.” “Punishable”
 2 means “subject to a punishment.” Black’s Law Dictionary (9th ed. 2009); *see also*
 3 *Reino v. State*, 352 So. 2d 853 (Fla. 1977) (“It is apparent that the phrase ‘punishable
 4 by death’ is susceptible of only a single construction [,] a crime for which the death
 5 penalty may be imposed.”). And the charged offense is not one that is subject to
 6 punishment by death--never, under any circumstances, from the moment that provision
 7 was added to the statute until now.

8 Under Ninth Circuit precedent, the statute of limitations for a particular crime is
 9 “inextricably tied to the nature of the offense” charged. *United States v. Gallaher*, 624
 10 F.3d 934, 940 (9th Cir. 2010) citing *United States v. Manning*, 56 F.3d 1188, 1196 (9th
 11 Cir. 1995). In *Manning*, the Ninth Circuit held that whether a crime if “punishable by
 12 death” under § 3281 or “capital” under § 3282 “depends on whether the death penalty
 13 may be imposed for the crime under the enabling statute, not ‘on whether the death
 14 penalty is in fact available for defendants in a particular case.’” *Gallaher*, 624 F.3d at
 15 940 citing *United States v. Ealy*, 363 F.3d 292, 296–97 (4th Cir.2004). Because first-
 16 degree murder is subject to capital punishment under federal law, it didn’t matter that
 17 the death penalty could not be imposed on the particular defendant in that case, by
 18 virtue of his status as an American Indian. *Id.* at 940. By contrast, here, the death
 19 penalty cannot be imposed for sexual assault under *Coker*--not on Mr. Olivas, and not
 20 on anyone, for any form of sexual assault that did not result in death. Because the
 21 “nature of the offense” is not one for which the death penalty can be imposed, the
 22 statute of limitations is five years. The indictment should be dismissed.

23 **4. *United States v. Briggs is not to the contrary.***

24 These facts set this case apart from *United States v. Briggs*, a case with surface
 25 similarity to the instant question, but, in fact, a world apart. In *Briggs*, the Court
 26 considered a provision of the Uniform Code of Military Justice, enacted in 1950, that
 27 made rape punishable by death. There was no question that the original drafters of the
 28 provision intended the death penalty to be a permissible punishment for the offense of

1 rape. And because “every statute’s meaning is fixed at the time of enactment,” *Wisc. 2 Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018), there was no argument (like 3 the one above) that the statute did not subject violators to the death penalty. 4 Nevertheless, the petitioner claimed that, though the offense was clearly “punishable by 5 death” by the terms of the statute, it was not punishable by death under Supreme Court 6 cases decided subsequent to the enactment of the statute. As such, he argued, the 7 UCMJ’s provision eliminating the statute of limitations for offenses punishable by 8 death did not apply to his rape offense.

9 The Court rejected the argument, finding that the phrase “punishable by death” 10 does not mean punishable by death according to the text of the statute and all 11 subsequent caselaw that might bear on the interpretation of that text. Rather, the 12 “natural referent” is the text of the code itself. And since rape is punishable by death, 13 under the text of the UCMJ, there was no statute of limitations for rape in the military 14 justice system.

15 There are several differences between the instant case and *Briggs*. For one, the 16 Supreme Court has cautioned against mingling criminal law and military justice 17 concepts. ““Military law . . . is a jurisprudence which exists separate and apart from the 18 law which governs in our federal judicial establishment.”” *Parker v. Levy*, 417 U.S. 19 733, 744 (1974) (quoting *Burns v. Wilson*, 346 U.S. 137, 140 (1953)). And the UCMJ 20 “cannot be equated to a civilian criminal code.” *Id.* at 749. And indeed, the Court 21 emphasized the *uniform* nature of the Uniform Code of Military Justice in deciding 22 *Briggs*. *Briggs*, 141 S. Ct. at 470.

23 Second, and most importantly, *Briggs* argued that the statute of limitations 24 provision should be read to require consideration of the text as written plus all 25 subsequent decisions. Doing so cannot be said to be an act of statutory interpretation, as 26 “every statute’s meaning is fixed at the time of enactment.” *Wisc. Cent. Ltd. v. United 27 States*, 138 S. Ct. 2067, 2074 (2018). Here, by contrast, the issue is a true question of 28 statutory interpretation: Whether Congress should be presumed to have written a statute

1 that flouts constitutional norms, *despite* giving the provision a title that limited itself to
2 constitutional boundaries. Those two questions are not the same.

3 Moreover, a driving motivation in *Briggs* was to avoid an interpretation that
4 rendered the statute of limitations less clear. *Briggs*, 141 S. Ct. at 471. Holding that the
5 interpretation of a statute depended on the text plus any caselaw that might bear on the
6 statute going forward would eviscerate any hope of clarity, particularly where the reach
7 of the death penalty depends on “evolving standards of decency,” and where several
8 antecedent questions (including the application of the Eighth Amendment to military
9 courts) muddied the waters significantly. *Briggs*, 141 S. Ct. at 472-473. Here, no such
10 concerns exist. *Coker* draws a clear line prohibiting the imposition of the death penalty
11 for a sexual assault. Congress is presumed to legislate against the backdrop of existing
12 laws--and arguably demonstrated its awareness of this limit when adding a provision
13 for death in civil rights *murder* cases. No line-drawing problems are created by Mr.
14 Olivas’s interpretation.

15 For all of these reasons, *Briggs* does not settle this question against Mr. Olivas.

16 **5. Any ambiguity as to whether a charge of aggravated sexual abuse
17 under 18 U.S.C. § 242 is an “offense punishable by death” should
18 be resolved in favor of Mr. Olivas.**

19 “[C]riminal limitations statutes are ‘to be liberally interpreted in favor of
20 repose.’” *Toussie v. United States*, 397 U.S. 112, 115 (1970) (quoting *United States v.*
21 *Scharton*, 285 U.S. 518, 522 (1932)). Even if “recourse to traditional tools of statutory
22 construction leaves any doubt about the meaning of” a statutory term, “ambiguity
23 concerning the ambit of criminal statutes should be resolved in favor of lenity.”” *Yates*
24 *v. United States*, 574 U.S. 528, 548, (2015) (plurality opinion) (quoting *Cleveland v.*
25 *United States*, 531 U.S. 12, 25 (2000)); *see also United States v. Davis*, 139 S. Ct.
26 2319, 2333 (2019) (“[T]he rule of lenity’s teaching that ambiguities about the breadth
27 of a criminal statute should be resolved in a defendant’s favor” is “perhaps not much
28 less old than’ the task of statutory ‘construction itself.’” (quoting *United States v.*

Wiltberger, 18 U.S. (5 Wheat.) 76, 95 (1820))). Thus, any ambiguity as to whether aggravated sexual assault under U.S.C. § 242 is an offense punishable by death should be resolved in favor of Mr. Olivas.

IV.

CONCLUSION

For all of the foregoing reasons, the defense respectfully requests that the Court dismiss Counts 1, 2, and 3 of the Indictment as time-barred.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: July 19, 2021

By /s/ *Angela C. C. Viramontes*

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